

1. Department of Public Service Dig Safe Case # 1292.

The Department of Public Service issued [0] Notices of Probable violation (NOPV's) to the Respondent during the 12 months preceding this incident.

7. Statute, Rule, Regulation or Order Allegedly violated: 30 V.S.A. § 7006b
8. The Department's Recommended Remedial Action(s) (Including Civil Penalties): Civil penalty in the amount of Two Hundred Dollars (\$200.00) and attendance at a Department-approved underground damage prevention seminar.
9. The Respondent has objected to the remedy recommended by the Department in the NOPV.²
10. The Respondent has not provided any statements or additional information in support of the objection the Respondent filed in response to the NOPV.
11. The Department has not filed any additional information, or comments, in response to the Respondent's objection.
12. No party has requested a hearing in this matter.
13. On January 29, 2008, the Respondent submitted payment of the recommended civil penalty of Two Hundred Dollars (\$200.00) to the Public Service Board.

Discussion

The Dig Safe statute establishes a process for prevention of damage to underground utility facilities. The process begins with excavators giving advance notice to Dig Safe about the approximate location of any intended excavation activities,³ and Dig Safe, in turn, notifying all utility companies authorized to serve in that location about the upcoming excavation activities.⁴ The utilities then are required to mark the locations(s) of their underground facilities so that the excavators may take proper precautions to avoid damaging the facilities.⁵ Specific definitions and

2. See Response to Notice of Probable Violation, filed 10/25/07.

3. 30 V.S.A. § 7004.

4. 30 V.S.A. § 7005.

5. 30 V.S.A. § 7006.

requirements are set forth in the Dig Safe statute as well as Public Service Board Rule 3.800, and penalties may be imposed by the Board when it finds a violation of the statute.

In this case, the Department has alleged that the Respondent violated 30 V.S.A. § 7006b which provides in relevant part:

Any person engaged in excavating activities in the approximate location of underground utility facilities marked pursuant to section 7006 of this title shall take reasonable precautions to avoid damage to underground utility facilities, including but not limited to any substantial weakening of the structural or lateral support of such facilities or penetration, severance or destruction of such facilities. When excavation activities involve horizontal or directional boring, the person engaged in excavation activities shall expose underground facilities to verify their location and depth, in a safe manner, at each location where the work will cross a facility and at reasonable intervals when paralleling an underground facility. Powered or mechanized equipment may only be used within the approximate location where the facilities have been verified.

The Department did not specify the precise manner in which the Respondent violated this statutory provision, and the Respondent did not specify the reasons for the objection it filed to the NOPV. However, by paying the recommended civil penalty, the Respondent appears to have acquiesced to the monetary penalty recommended by the Department in the NOPV.

Conclusion and Order

Although the Respondent objected to the remedy that the Department has recommended, the Respondent provided no explanation of its objection, did not refute any of the allegations set forth in the NOPV, and has paid the civil penalty recommended in the NOPV. We therefore conclude that the monetary civil penalty proposed in the NOPV is appropriate, and should be imposed.⁶ However, we decline to require that the Respondent attend an Underground Damage Prevention Seminar as recommended by the Department in the NOPV because there is not sufficient information in the record of this proceeding to support a conclusion that attendance at the seminar is warranted.

6. See, Public Service Board Rule 3.807(G).

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. J & W Directional Drilling, LLC, is liable for a civil penalty in the amount of Two Hundred Dollars (\$200.00) and that the check in the amount of Two Hundred Dollars (\$200.00) already sent to the Public Service Board by J & W Directional Drilling, LLC, on January 29, 2008, is accepted as payment in full of this civil penalty.
2. This proceeding shall be closed.

Dated at Montpelier, Vermont, this 30th day of June, 2009.

<u>s/ James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/ David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/ John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: June 30, 2009

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.